

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.2.05A
PROCEDURES MANUAL		ISSUE DATE	August 18, 2000
SUBJECT	AVS - O/C Investigations	Section	AVS
		Last Revised	3-12-97

OBJECTIVE AND INTENT:

To ensure DMLR properly investigates each alleged ownership and control link (situation where a person or company may have owned or controlled an entity with a bond forfeiture, outstanding violation(s), or unpaid fees and civil penalties).

GENERAL:

O/C = ownership and control

AVS = Applicant Violator System

The Reclamation Program Manager (AVS Administrator) will coordinate all O/C-AVS investigations and will ensure the relevant information is entered into the AVS.

An **O/C-AVS panel**, consisting of DMLR personnel selected by the DMLR Director, will evaluate each O/C-AVS investigation and finding which alleges a potential link. Based upon the panel's review, a recommendation to accept or reject the alleged link or to seek additional information will be made to the AVS Administrator.

PROCEDURES:

DMLR personnel serving as investigators in this process shall have access to DMME/DMLR records and any other information which the agency may obtain in the course of making an O/C determination pursuant to 4 VAC 25-130-700.5 and Parts 4 VAC 25-130-773 and 4 VAC 25-130-778. The sources of information may include, but are not limited to:

- DMME/DMLR permitting and licensing records.
- DMME/DMLR automated systems.
- Office of Surface Mining (OSM) records.
- OSM automated systems (AVS, AML, Enforcement/Administration, & MSHA data bases).
- Virginia State Corporation Commission records.
- Circuit Court Records (leases, liens, etc.).
- County Commissioner of Revenue records (severance taxes).
- Interviews with coal company personnel, state officials, and federal officials.
- Documentation (leases or other contracts) provided by or subpoenaed from the company owning or controlling the coal which was mined.

In the event a company fails to provide the investigator with copies or adequate documentation of leases, contracts, or other written agreements between the companies or persons involved, the investigator will submit a written request for a subpoena to the AVS Administrator. If the AVS Administrator concurs with the request, a subpoena will be prepared and served upon the appropriate party(ies). The

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.2.05A
PROCEDURES MANUAL		ISSUE DATE	August 18, 2000
SUBJECT	AVS - O/C Investigations	Section	AVS
		Last Revised	3-12-97

Administrator may have the investigator personally serve the subpoena on the party(ies), or may elect to send such by certified mail (return receipt requested).

Ownership and Control Determination:

After gathering the relevant information, the investigator will review the data to determine whether a possible O/C link to a violator exists (per 4 VAC 25-130-700.5 - definition of “owned or controlled” and Parts 4 VAC 25-130-773 and 4 VAC 25-130-778).

For each review, the investigator will prepare a written “findings of fact” and a preliminary determination.

- In the event the preliminary determination indicates no O/C link was or is present, the investigator’s finding will state such and the review will be concluded. This determination will be recorded in the AVS records.
- For cases in which an O/C link is determined to exist or is presumed to have existed, the investigator will present the findings and determination to the O/C-AVS panel. The panel will evaluate the information and make a recommendation to the AVS Administrator whether the link exists, does not exist, or whether additional research is needed.

If a final determination can be made from the O/C-AVS panel’s review, the AVS Administrator and investigator will ensure that the relevant information is documented in the case file (bond forfeiture/violation) and appropriate information entered into the automated tracking system.

Presumption Determination:

In a situation where the investigation and determination reveals a “presumed” O/C link, the AVS Administrator shall cause a due process (30 days) letter to be written to the entity alleged to have the O/C link. The letter (sent by certified mail) shall set forth the DMLR’s determination and inform the entity of its right to rebut or refute the allegation.

If the entity submits a response to rebut or refute the presumption determination, the AVS Administrator shall review the new information in an expeditious manner. The information will be presented to the O/C panel:

- If the response or rebuttal is sufficient and successful, the O/C panel will recommend acceptance. The AVS Administrator will inform the entity in writing that its rebuttal was accepted and the Division’s records would (based upon the present information) be amended to show that no O/C link existed.
- If the rebuttal is insufficient and unsuccessful, the Administrator will inform the entity in writing of that determination. The relevant O/C data will be entered into the AVS within 30 days.

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.2.05A
PROCEDURES MANUAL		ISSUE DATE	August 18, 2000
SUBJECT	AVS - O/C Investigations	Section	AVS
		Last Revised	3-12-97

If the entity does not respond within 30 days from receipt (or refusal to claim) of the Division's presumption determination, the AVS Administrator shall notify the entity (by letter) that the O/C information and determination would be entered into the AVS. The letter would also inform the entity that this action would block its future permitting ability.

In the event the Division cannot make a final determination at the end of a 90 day period (from the presumption determination), the AVS Administrator will have the O/C data entered into the AVS. However, the AVS office will continue to investigate the case until a final determination can be made and all relevant O/C data is entered into the AVS.

Enforcement Action:

In addition to the presumption letter, the Division will issue a NOV to the entity for failing to list in its permit, renewal, or revision application(s) all the companies that it may have had an ownership and control relationship with.

- for those instances where the presumption of ownership and control is made after May 1, 1994, the NOV will be issued at the same time the Division renders its presumption determination.
- if the permittee has not listed the violator in the permit application, the Inspector would be notified by the AVS office. The Inspector would issue a NOV for the permittee's failure to list the violator, and require the permittee to amend the application to include such violator.

O/C Agreements:

4 VAC 25-130-773.15(b) precludes a company with outstanding violations, unpaid civil penalties or fees, or bond forfeitures from obtaining a permit. This also applies to those held to "own or control" such entity.

An entity which has been determined to have an O/C link (or is in the process of having such determination rendered), may submit a written proposal to the DMME/DMLR for abating any outstanding violations or paying outstanding civil penalties or fees. The proposal may request to perform reclamation work as a means to satisfy its obligation.

The AVS Administrator will coordinate the proposal review with the Reclamation Services Manager, Chief Engineer, and Assessments Officer (when civil penalties are involved).

A proposal to perform reclamation must specifically detail how the reclamation will be accomplished and the dates for initiation and completion of reclamation.

If the Division accepts the proposal, an agreement shall be prepared and signed by the entity. The agreement would not be executed until such time that it is accepted and signed by the DMME Deputy Director. The date of the signing would constitute execution of the agreement.

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.2.05A
PROCEDURES MANUAL		ISSUE DATE	August 18, 2000
SUBJECT	AVS - O/C Investigations	Section	AVS
		Last Revised	3-12-97

In the event the entity proposes to settle a civil penalty debt for less than the full amount, the Assessments Officer will prepare a draft agreement and justification for DMME/DMLR management consideration.

- If the amount of the civil penalties is equal to or greater than \$50,000, the settlement proposal for less than the full amount must be reviewed and approved by the DMME Director, Attorney General, and the Governor before the agreement can be executed.
- If the amount of penalties is less than \$50,000, the settlement proposal for a lesser amount must be approved by the DMME Director and the Attorney General.

The proposed agreement and supporting materials will address all other remedial measures the entity has proposed to perform to resolve its situation. Once the draft proposal is completed, it will be forwarded to the AVS Administrator. The proposal will be reviewed by the Division Director, DMME Deputy Director, and the Assistant Attorney General. Once the proposal package is finalized, the AVS Administrator will forward it to the DMME Deputy Director for action by the Director, Attorney General, or Governor.

If the agreement is approved by the Attorney General or Governor, it will be returned to the DMME for the Deputy Director's signature. The AVS Administrator shall ensure a copy of the executed agreement is provided to the entity, Division Director, Reclamation Services Manager, Assessments Officer, and the Deputy Director.

Record Keeping:

After an agreement has been properly executed, copies shall be distributed as previously discussed and where applicable to the following:

- DMLR Inspector(s).
- OSM's Big Stone Gap field and Lexington, Kentucky AVS offices (The AVS office will use the information to override procedures so that permitting actions may be conditionally approved.)

The Program Support Technician will enter the information (presumption letters and O/C investigations) into the DMLR tracking system, and will file the agreement and pertinent file materials in the AVS office.

Follow-up:

For agreements which require field remediation, the Field Inspector will monitor (frequency for active sites) the required work to ensure all phases, deadlines, and requirements for the reclamation plan are met. The Inspector shall prepare an inspection report documenting the compliance activities and submit such to the attention of the AVS Administrator.

DIVISION OF MINED LAND RECLAMATION		PROCEDURE NO.	2.2.05A
PROCEDURES MANUAL		ISSUE DATE	August 18, 2000
SUBJECT	AVS - O/C Investigations	Section	AVS
		Last Revised	3-12-97

Once all the remedial work required by the agreement is completed and documented in an inspection report, the frequency of inspection shall be the same as for an abandoned or completed site for the period required for final release (per the laws and regulations which applied to the site at the time of bond forfeiture).